UNITED NATIONS

THIRD CONFERENCE
ON THE LAW OF THE SEA

PROVISIONAL

For participants only

A/CONF.62/C.3/SR.12
8 August 1974
ENGLISH
ORIGINAL: FRENCH

Second Session

THIRD COMMITTEE

PROVISIONAL SUMMARY RECORD OF THE TWELFTH MEETING

Held at the Parque Central, Caracas,
on Monday, 5 August 1974, at 3.25 p.m.

Chairman:	Mr. YANKOV	Bulgaria
Rapporteur:	Mr. HASSAN	Sudan

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CONDUCT AND PROMOTION OF MARINE SCIENTIFIC RESEARCH (CRP/Sc.Res/24)

Mr. BOHTE (Yugoslavia), referring to the document (CRP/Sc.Res/24) which had just been distributed, asked why it had not been formally introduced at the informal meetings on scientific research. He would also like to know what had become of the proposal made by Peru and supported by Yugoslavia that the UNCTAD representative should be invited to make a statement to the Committee on the transfer of technology.

The CHAIRMAN said that the document to which the Yugoslav representative had referred was part of the second progress report of the Chairman of the informal meetings on scientific research, who happened to be the representative of the Federal Republic of Germany.

Mr. PREVER (Federal Republic of Germany), speaking on behalf of the participants in the informal meetings, agreed with the Yugoslav representative that the document had not been formally presented; its appearance had merely been announced by one delegation at the meeting held on 31 July; as it was to be distributed on 5 August, the sponsors had had no objection to its being mentioned in the progress report.

Mr. STEINER (Secretary of the Committee) said in answer to the Yugoslav representative's second question that when the proposal had been made, the UNCTAD representative had already left Caracas. Another UNCTAD representative was to take part in the work of the Conference, but he had not yet arrived; in that connexion he pointed out that that representative might not be fully conversant with the question under discussion. In any event, the Secretariat would inform him of the Third Committee's invitation; he was sure that it would be accepted.

PRESENTATION OF PROPOSALS (A/CONF.62/C.3/L.5, L.7 and L.8)

Mr. HARAN (Israel) introduced document A/CONF.62/C.3/L.5. Article 1 was in line with a trend that was emerging in international law, namely, to make offences of activities that might have serious consequences, such as the hijacking of aircraft or acts which might be dangerous to civil aviation, for which an appropriate penalty must be imposed. During the general debate his delegation had already pointed out

(Mr. Haran, Israel)

the difficulty of proceeding rapidly and effectively against those who caused damage to marine environment. The aim of article 1 was to institute a better method of prevention.

Article 2 aimed at facilitating and speeding up legal proceedings by providing that documentary evidence submitted by the competent authorities of one State would be admissible in the courts of another State. Those two articles were complementary and they supported the proposals made by Kenya (A/CONF.62/C.3/L.2), Greece (A/CONF.62/C.3/L.4 and the Federal Republic of Germany (A/CONF.62/C.3/L.7).

Miss AGUTA (Nigeria), introducing the draft articles contained in document A/CONF.62/C.3/L.8, said that the concept of the common heritage of mankind would be meaningless unless it was accompanied by the development and transfer of technology. There were four essential aspects to that concept: (1) all men, living in both developed and developing countries and irrespective of their geographical situation, were heirs to the common heritage; (2) the developing countries must have control of the exploration and exploitation of their own resources within their national jurisdiction; (3) those countries must be assisted to attain their economic independence; (4) there must be a levelling up of world living standards.

Her delegation was happy to see that its proposals corresponded to the four aspects singled out by the Secretariat in document A/CONF.62/C.3/L.3, namely, (a) development of technological capabilities of developing countries; (b) sharing of knowledge and technology between developed and developing countries; (c) training of personnel from developing countries; (d) transfer of technology to developing countries.

The problem of the development and transfer of technology which the Committee was considering was complex and delicate; it should therefore be approached with great care but with realism. Her delegation had tried to formulate an approach whereby standards would be made uniform, gaps bridged and the acquisition of knowledge facilitated, information disseminated to all and benefits equitably shared.

Taking the draft articles one by one, she pointed out that article 1 aimed at ensuring an adequate and equitable transfer of technology, for to promote the concept of the common heritage of mankind, there must be equal opportunity for all its heirs.

In article 2 her delegation had tried to map out methods by which that goal could be achieved, namely, by the establishment of regional and subregional centres responsible for training and education, advanced management studies and the prompt publication of results.

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(Miss Aguta, Nigeria)

Article 3 made provision for the issue of exploration and exploitation licenses and for the in-service training of the nationals of developing geographically disadvantaged countries; it also linked scientific research with development and the transfer of technology. Paragraph 2 of the same article would make available to every State the blueprints and patents of plant and machinery used in the exploration and exploitation of the international area. Paragraph 3 ensured that States which originated the blueprints and patents would not lose but gain by their contribution to mankind. Paragraph 4 took care of the needs of the developing countries in that sphere.

It was obvious that no regulations could be enforced without co-operation; that was why her delegation suggested in article 4 that all States should co-operate actively in the achievement of the noble ideal of a common heritage.

If the level of living of the developing countries was raised and if the concept of the development and transfer of technology was promoted, the general living standards of the entire world would automatically rise.

Some delegations had already supported the draft articles she had introduced; her delegation hoped that its proposal would command general support.

Mr. JAIN (India) said that the draft articles submitted by Nigeria were most interesting; however, he thought they should contain a reference to the principle of non-discrimination.

Mr. KIRTON (Jamaica) said that his delegation's approach to the question of the preservation of the marine environment was guided by five basic considerations: the need clearly to define and delimit the jurisdictional competence within the various maritime zones; the need to establish objective scientific and technological criteria for the formulation of rules, standards and recommended practices; the necessity of bearing in mind the interaction between the physical, human and biological activities that were constantly taking place in those zones and their consequent implications for the formulation and implementation of rules, standards and recommended practices; the need to strike a proper balance between the integrity of the marine environment and other legitimate uses of ocean space; lastly, the need to recognize a new economic and social order in which the industrial and economic development of the developing countries was to be speeded up.

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(Mr. Kirton, Jamaica)

His delegation had considerable sympathy with the zonal approach, in view of the fact that in all the maritime zones in which national jurisdiction extended beyond 12 miles, developing geographically disadvantaged countries like Jamaica would have a right of access to the living resources. The competence to establish rules and standards and recommended practices would lie with the coastal States in the case of zones lying within their national jurisdiction, whereas the authority managing the common heritage of mankind would be competent in the zone beyond national jurisdiction, subject to the powers of international organizations such as UNEP and IMCO with regard to co-ordination and technical matters. In the exercise of that competence, the authority should ensure that standards were formulated according to objective scientific and technological criteria, that particular emphasis would be placed on regional characteristics, and that the standards would be sufficiently high but not beyond the economic capacity of developing countries and would not prevent them from continuing their economic development programmes.

In that respect, a distinction made by ICAO regarding the régime applicable to the air might provide a pointer in the solution of the dilemma between standards and recommended practices. The standards would constitute the indispensable minimum for effective regulation and would be binding in character, whereas the recommended practices would constitute desirable objectives to be attained according to each country's capacity. That system would recognize the legitimate fears of the developing countries while at the same time respecting the need to develop science and technology; it would also recognize the moral obligation of the developed countries to take all possible measures to redress the balance of nature, which had been disturbed by centuries of pollution for which they were responsible.

If special competences within the various maritime zones were to be recognized, the existence of legitimate rights and uses by others in such zones must also be recognized. Accordingly, standards for the preservation of the marine environment should not be formulated in such a way as to interfere unduly with the legitimate exercise of such rights as innocent passage and freedom of navigation or of the rights of developing geographically disadvantaged States.

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(Mr. Kirton, Jamaica)

The Conference would have to determine the ways in which the obligations created by the new convention in relation to the preservation of the marine environment would be implemented; it would also have to determine the responsibilities and liabilities that would arise from failures to respect those obligations. His delegation considered that it would be the duty of States to incorporate in their domestic law any obligations arising under the future convention in matters falling within their jurisdiction. However, liability for any damage arising from failure to comply with those obligations must rest with the person committing the act. It would be quite intolerable to make the State liable simply because the act had been committed within its jurisdiction. In that connexion, the Jamaican delegation considered that the proposal in document A/CONF.62/C.3/L.6 placed undue emphasis on the obligations of States. That was particularly true of article III, paragraph 2, which provided that "States shall take all necessary measures to ensure that activities under their jurisdiction or control do not cause damage to areas beyond their national jurisdiction."

Most of the developing countries might well find themselves unable to take such measure in an extensive jurisdictional area. It seemed impractical, bearing in mind the right of freedom of navigation, to guarantee that all activities carried on in that zone would never cause damage outside the zone, and it would be unrealistic to expect States to accept liability for such damage. That was why it was necessary to distinguish clearly between the obligation of the State to prescribe standards on the one hand, and the liability of the person who committed the act that caused the damage, on the other.

Jamaica was located in an area where a very great number of maritime activities were carried on and it was exposed to all the dangers of pollution. For that reason it was prepared to co-operate in finding effective and generally acceptable solutions.

Mr. BOTHA (South Africa) stressed that the problem of marine pollution, especially ship-based pollution, was of vital importance to his country. Indeed, South Africa was a country with one of the longest coastlines relative to its total land area. The major ocean currents flowing along the coasts of his country affected not only its own shores, but also the shores of countries very far afield, such as Australia, New Zealand, Madagascar, Mauritius, Brazil, Uruguay and Argentina. The danger of pollution along the southern coast of South Africa had been increased, on

(Mr. Beth, South Africa)

the one hand, as a result of the conclusion of the International Load Line Convention of 1966 and, on the other, because of most unfavourable sea conditions. The number of vessels rounding the tip of South Africa had increased greatly during the past 10 years: more than 60 per cent of the total volume of oil carried by sea passed close to the shores of South Africa. The risk of accidents - and some had already occurred - was therefore very great.

Land-based pollution was likewise causing serious concern, and the South African authorities were endeavouring to combat it; in contrast, they were unable to prevent or control ship-based pollution. Because of inadequate international arrangements, especially with regard to coastal State jurisdiction, South Africa had to spend large amounts of money on equipment and cleaning operations in order to minimize the effects of pollution caused by spillages or discharges.

The various proposals that had already been advanced placed the responsibility, broadly speaking, for combating ship-based marine pollution on the flag State, the port State and the coastal State. The South African delegation believed that internationally agreed standards and criteria were prerequisites for effectively controlling marine pollution on a world-wide basis. Only in cases of emergency should the coastal States be empowered to intervene.

The South African delegation would support any proposal granting suitable powers of enforcement to the flag State, the port State or both. It was, however, also necessary that the coastal States should be endowed with strong and effective powers of enforcement.

Mr. VELLA (Malta) said that his delegation approved, in its broad outlines, the report entitled "Problems of acquisition and transfer of marine technology" (A/CONF.62/C.3/L.3), which constituted a valuable source of information for the developing countries. It was obvious that the study could not be exhaustive, because of the nature of the subject matter itself. Technology was never at a standstill, and it would perhaps be useful if the Secretariat would keep the study up to date.

Section E of part IV, which was entitled "Appropriate actions which may be taken by the United Nations" showed the limitations of the study. It was to be noted that some of those measures would entail financial implications whereas others would not involve additional expenditure.

The delegation of Malta wished to associate itself with that of Peru in requesting

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(Mr. Vella, Malta)

the Secretariat to prepare a study, for use at the next session of the Conference, on the uses of ocean space mentioned in paragraph 60 of the report. It could be a short informative study, describing the various types of technology and use of ocean space, and the possibilities of transferring those types of technology. The uses of ocean space had important implications for the law of the sea in general, and a study by the Secretariat on that subject would be of great value to the Conference.

Mr. JAIN (India), replying to the comments of the Jamaican representative on article III, paragraph 2, of document A/CONF.62/C.3/L.6, said that Jamaica's concern was most understandable. Nevertheless, if the intention really was to prevent pollution of the marine environment, it would hardly be possible to restrict the scope of the measures envisaged. He wished to point out, however, that the word "damage" must not be interpreted to mean actual damage; the word should be understood in its legal sense. Thus, since what was at issue was a legal concept which covered the extent to which the law took damage into consideration, he did not think there would be any difficulty about its adoption.

Mr. BREUER (Federal Republic of Germany) said that, before introducing document A/CONF.62/C.3/L.7, he would like to make a few general observations. As it had already indicated when the general statements were being made, the delegation of the Federal Republic of Germany considered that the essential task of the Conference, as far as preservation of the marine environment was concerned, consisted in improving and further elaborating the international and regional conventions on ship-based pollution which had been concluded in earlier years. For that reason, the draft articles that his delegation was submitting dealt mainly with that aspect of pollution. The text concentrated on the enforcement of regulations in that respect and in particular on the crucial issue of ship inspection. The question of criminal jurisdiction, while closely related to the enforcement problem, posed quite different problems and hence should be dealt with separately. His delegation was ready to submit a draft article on that topic at a later stage.

The arguments of delegations which advocated the so-called "zonal approach" were not very convincing, either from the point of view of the protection of the marine environment or from that of the protection of coastal States' marine resources. The

(Mr. Breuer, Federal Republic of Germany)

marine environment and its resources could only be effectively protected if the oceans were treated as an ecological unit. Pollution control zones could deal only with the problems caused by pollution incidents occurring within those zones. Ships at sea were a potential source of pollution everywhere and harmful substances discharged by them outside such zones could drift into those zones without the coastal State's being able to take enforcement measures against those ships. Furthermore, there were considerations of principle which argued against the establishment of environment protection zones to control vessel-source pollution on the high seas. The argument most frequently put forward in favour of the establishment of such zones was that coastal States were in general more vigilant than flag or port States in carrying out their responsibilities. If that were true, land-based pollution, for which coastal States were largely responsible, would not be the principal source of marine pollution. His country, as a coastal State as well as a flag and port State, rejected that assumption for the following reasons: international law regulated regulations between States and as such was based on the principles of sovereign equality and non-discrimination. The new law of the sea must not therefore contain provisions which undermined those essential foundations. However, his delegation believed that States did not neglect their environmental responsibilities intentionally but because they did not possess the administrative and other means to carry out those obligations effectively. Flag States were not the only ones which faced those difficulties; the great majority of coastal States would find themselves in the same situation if they were to assume the responsibility for controlling such vast areas of the sea.

His delegation therefore preferred a system of pollution prevention measures based on international co-operation, thus avoiding the risks of dividing up large areas of the high seas into national pollution control zones.

In the draft articles (A/CONF.62/C.3/L.7), his delegation had tried to elaborate the main elements of such a system. Since they conferred the various control functions in each case on the State which seemed the most appropriate to exercise them effectively, the approach might be called "functional".

Since the draft articles were not yet available in all languages, he read out the various articles, drawing particular attention to article IV which empowered a coastal

(Mr. Breuer, Federal Republic of Germany)

State to board any ship suspected of having substantially polluted the high seas in the vicinity of its territorial sea and after inspecting that ship, to send a report to the competent international organization and to the flag State. He reserved the right to make a further statement concerning the draft articles he had just introduced.

The meeting rose at 4.35 p.m.